IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4233 OF 2007

Mr. Nijam Rajab Kalawant, Aged 45 yrs. Occu. Agriculturist, R/o.Ward No.6, House No.347, Awadhut Akhada, Ichalkaranji, Tal.Hatkanangale,Dist.Kolhapur.	.. Petitioner. (Org.Claimant/ Decree Holder)
V/s.	
1. The State of Maharashtra, through the Collector, Kolhapur District Kolhapur 2. The Chief Officer, Ichalkaranji Municipal Council Ichalkaranji, Dist.Kolhapur.	.. Respondents Nos.1 & 2 Judgment Debtor in Reg.Darkhast Appln.No.55/05.

Mr.P.M.Arjunwadkar for the Petitioner.

Mr.K.K.Tated, AGP for the Respondent No.1.

T.S.Ingale with Archana B.Kologi for Respondent No.2.

CORAM : A. S. OKA, J.

DATED : 20TH DECEMBER,2007.

JUDGMENT :-

. In view of the administrative order dated 16th October 2006 passed by the Hon'ble the Chief Justice, this Petition has been assigned to this Court. This petition was finally heard on the last date.

2. The challenge in this writ petition under

Article 227 of the Constitution of India is to the orders dated 18th of August, 2006 as well as 07th of August, 2006 passed by the learned Additional District Judge, Ichalkaranji. The petitioner is a claimant in a Reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The said Reference was allowed. An Appeal preferred by the acquiring body against the said Judgement and Award has been admitted by this court. On the application for stay filed by the acquiring body in the said Appeal, this court passed an order dated 07th of March, 2006, permitting the petitioner to withdraw the compensation amount subject to furnishing security to the satisfaction of the Reference Court.

3. The petitioner filed a security bond dated 21st of June, 2006 setting out therein the description of the property held by him and stating that he was creating a charge on the said property for the amount deposited by the acquiring body.

4. The said security bond was not accepted by the trial Court and by order dated 07th of August, 2006 the petitioner was directed to furnish security bond with a solvent surety for the amount of Rs.9,44,048/-. The petitioner applied for modification of the said order.

The said prayer was rejected by the order dated 18th of August, 2006.

5. The learned Advocate appearing for the petitioner has made detailed submissions pointing out various provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as "the said Code") as well as the Civil Manual. Shri Tated, learned Additional Government Pleader appearing for the first respondent and Shri Ingale, learned counsel appearing for the second respondent have also made detailed submissions. In short the question is whether the trial Court ought to have accepted the security bond offered by the Petitioner.

6. I have carefully considered the submissions. The relevant part, i.e. paragraph 3 of the order dated 7th of March, 2006 passed by this court in first Appeal reads thus :

> "3. If the amount is deposited by the Applicant within the stipulated time, the original Claimant will be entitled to withdraw the said amount subject to furnishing security to the satisfaction of the Reference Court. Civil Application is disposed of with the above

directions."

7. Obvious object of directing the petitioner to furnish a security was to ensure that in the event the acquiring body succeeds in the first Appeal and the Award passed by the Reference Court is either set aside or modified, the amount withdrawn by the petitioner can be brought back before the court. This object of directing the petitioner to furnish security is essentially to facilitate the restitution in the event of success of the acquiring body in the Appeal.

8. It will be necessary to refer section 145 of the Code of Civil Procedure, 1908. Section 145 of the said Code reads thus :

> 145. Enforcement of liability of surety.-- Where any person [has furnished security or given a guarantee]--
>
> (a) for the performance of any decree or any part thereof, or
>
> (b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

[the decree or order may be executed in the manner herein provided for the execution of decrees, namely :--

(i) if he has rendered himself personally liable, against him to that extent;

(ii) if he has furnished any property as security, by sale of such property to the extent of the security;

(iii) if the case falls both under clauses (i) and (ii), then to the extent specified in those clauses,

and such person shall be deemed to be a party within the meaning of section 47 :

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

9. In the present case, the security is required to

be taken essentially for the purpose set out in clauses (b) and (c) of section 145. The section also provides for the mode in which the security can be enforced. If a surety or a party has given a bond rendering himself personally liable, the order can be executed against him to the extent of his liability. If the surety has furnished any property as security, the order can be executed by sale of such property to the extent of the security. Where the surety has furnished his property as a security and he has also rendered himself personally liable to pay the amount, the order can be executed by both the modes.

10. Rule 6 of the Order 41 of the said Code reads thus :

> . 6. Security in case of order for execution of decree appealed from.-- (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the

> decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.
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> . (2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall on the application of the judgement debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until appeal is disposed of.

11. Sub-Rule 1 of Rule 6 gives power to the Appellate Court to require any security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property. The security can be ordered to be furnished for due performance of the order or decree of the Appellate Court. The order of this Court in First Appeal is obviously passed in exercise of the said power. Form No.3 in the Appendix G to the said Code prescribes a form of a security bond to be given during the pendency of Appeal. The said Form provides for a surety mortgaging his properties specified in the

Schedule annexed to the bond.

12. Thus while accepting the security, the court has to ensure that the security will facilitate restitution as contemplated under section 144 of the said Code and will also facilitate the enforcement of due performance of the decree passed in Appeal. In a given case, the decree holder who is required to give security, can offer to create a charge by mortgaging his own immovable property. If such security is offered, the concerned court can verify the title of the decree holder to the said property offered as a security. Normally the court will have to call upon the decree holder to furnish a valuation showing current market value of the property offered by way of security. The market value can be determined on the basis of a certificate of valuation of the competent authority or a government approved valuer. The court can always take affidavit of the decree holder stating that the property is free from any encumbrance. After satisfying that the decree holder has a clear title to the property and that the market value of the property is sufficient to cover the amount which is sought to be secured, the court concerned can always take personal bond from the decree holder for the amount sought to be secured as well as a security bond in Form No.3 of the APPENDIX -G to the said Code, mortgaging the

property. If the such security is furnished, the court concerned can always accept the security of the decree holder himself after giving an opportunity of being heard to the judgment debtor/ Appellant. If security as aforesaid is accepted, the court can proceed personally against the Decree holder as well as his property given as a security. Similarly, the Decree holder can produce a surety who is ready to mortgage his property for securing the amount. The security of such person can be similarly accepted after following aforesaid procedure.

13. In number of cases especially arising out of an Appeal against an award of Reference Court under Section 18 of the said Act, it has noticed that the Reference Courts/Trial Courts are calling upon the claimants/ decree holders to furnish solvent surety. When the security as mentioned in earlier paragraph is offered by the decree holder and if the Court is satisfied that the security is adequate, the same can be always accepted without insisting on furnishing a security bond with a solvent surety. In fact in many cases security of a valuable property may be more advantageous than a mere security bond of a solvent surety. Therefore, in a given case if a party required to furnish security by the order of the Appellate Court offers proper security of his own property, it will be a good security. In a

given case the court can accept the security of a surety, who offers to create a charge by mortgaging his property for repayment of the amount. Bond of such surety can be taken in the aforesaid form No.3.

14. Now turning to the facts of the present case, the petitioner has set out details of his property in the security bond. The trial court could have called upon the petitioner to produce documents of title and evidence regarding the valuation of the property. After recording satisfaction as indicated above, the trial court could have accepted the security offered by the petitioner. However, without considering the security offered by the petitioner, the trial court has directed him to furnish a security bond with a solvent surety. If after recording satisfaction as above the security offered by the petitioner can be accepted, it is not necessary for him to furnish a solvent surety.

15. Therefore, I pass following order :

i. The impugned orders dated 07th of August, 2006 and 18th of August,2006 are quashed and set aside.

ii. The trial court will consider afresh the

security offered by the petitioner in the light of the observations made by this court in the judgement.

iii. After examining all the aspects, the trial Court shall pass appropriate order as expeditiously as possible.

iv. Parties are directed to appear before the trial Court on 21st of January, 2008 at 11.00 a.m. for that purpose.

v. There will be no orders as to costs.

vi. The parties and the concerned court to act on an authenticated copy of this order issued by the Registry.

(A. S. OKA, J.)

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